IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application: **Barilloud et al.**	§
	§
	§
Serial No.: **09/714,724**	§ Group Art Unit.: **2145**
	§
Filed: **November 16, 2000**	§ Examiner: **Swearingen, Jeffrey R.**
	§
For: **Method and System for Automatic**	§ Attorney Docket No.: **AUS920000483US1**
Load Balancing of Advertised Services by	§
Service Information Propagation Based	§
on User On-Demand Requests	§

Office of Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

35525
PATENT TRADEMARK
OFFICE CUSTOMER

RENEWED PETITION UNDER 37 CFR 1.137(b)

A letter of Dismissal of a Petition to Revive for the above-application (copy attached) was received by Applicant stating:

"The petition is DISMISSED because it is unsigned. It is noted that the signature page is missing, since the "petition" consists of page 1 of Form PTO/SB/64, which is a 2-page form ...."

The letter of Dismissal also states:

"Petitioner has supplied the reply in the form of an election of the invention to be examined and the petition fee of $1,500; however, the petition lacks an adequate statement of unintentional delay."

Enclosed is a copy of the Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 C.F.R. 1.137(b), including page 2 which includes the statement of unintentional delay, signed by the assignee of record of the entire interest, dated October 12, 2006. Applicants also enclose a copy of the Response to Restriction Requirement as filed on October 13, 2006.

Applicants respectfully request reconsideration of the Petition for Revival of an Application for Patent Abandoned Unintentionally and for prosecution to be re-opened.

No fees are believed to be necessary. If, however, any fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 09-0447. No extension of time is believed to be necessary. If, however, an extension of time is required, the extension is requested, and I authorize the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 09-0447.

Respectfully submitted,

/Duke W. Yee/

Duke W. Yee
Reg. No. 34,285
Yee & Associates, P.C.
PO Box 802333
Dallas, TX 75380
972/385-8777
Attorney for Applicants

IBM CORP (YA)
C/O YEE & ASSOCIATES PC
P.O. BOX 802333
DALLAS TX 75380

COPY MAILED

MAY 0 4 2007

OFFICE OF PETITIONS

In re Application of
Franck Barilloud, et al.   :
Application No. 09/714,724   :   ON PETITION
Filed: November 16, 2000   :
Attorney Docket No.   AUS920000483US1   :

This is a decision in response to the communication, filed October 13, 2006, which is being treated as a petition to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **DISMISSED** because it is unsigned. It is noted that the signature page is missing, since the "petition" consists of page 1 of Form PTO/SB/64, which is a 2-page form entitled "Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)."

37 CFR 1.33(b) states that:

Amendments and other papers filed in the application must be signed by:

>   (1) An attorney or agent of record appointed in compliance with §1.34(b);
>
>   (2) A registered attorney or agent not of record who acts in a representative capacity under the provisions of §1.34(a);
>
>   (3) The assignee of record of the entire interest, if there is an assignee of record of the entire interest;
>
>   (4) An assignee of record of an undivided part interest, and any assignee(s) of the remaining interest and any applicant retaining an interest, if there is an assignee of record of an undivided part interest; or
>
>   (5) **All of the applicants** (§§ 1.42. 1.43 and 1.47) for patent, unless there is an assignee of record of the entire interest and such assignee has taken action in the application in accordance with §§ 3.71 and 3.73.

Further, a grantable petition under 37 CFR 1.137(b)[1] must be accompanied by: (1) the required reply,[2] unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(III)(C) and (D).

Petitioner has supplied the reply in the form of an election of the invention to be examined and the petition fee of $1,500; however, the petition lacks an adequate statement of unintentional delay. See item (3) above.

This decision is made without prejudice to reconsideration. However, any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)" and the omissions noted above.
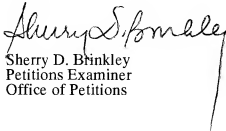
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
                    Commissioner for Patents
                    Post Office Box 1450
                    Alexandria, VA 22313-1450

By hand: U.S. Patent and Trademark Office
                    Customer Service Window, Mail Stop PETITION
                    Randolph Building
                    401 Dulany Street
                    Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300**.

Any questions concerning this decision may be directed to the undersigned at (571) 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

---

[1] As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

[2] In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)	Docket Number (Optional) AUS920000463US1

First named inventor: Jeffrey R. Swearingen

Application No.: 09/714,724

Art Unit: 2145

Filed: 11/16/2000

Examiner: Jeffrey R. Swearingen

Title: METHOD AND SYSTEM FOR AUTOMATIC LOAD BALANCING OF ADVERTISED SERVICES BY SERVICE INFORMATION PROPAGATION BASED ON USER ON-DEMAND REQUESTS

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (571) 273-8300

> NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

> NOTE: A grantable petition requires the following items:
> (1) Petition fee;
> (2) Reply and/or issue fee;
> (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995, and for all design applications; and
> (4) Statement that the entire delay was unintentional.

1. Petition fee
   ☐ Small entity-fee $ _____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

   ☑ Other than small entity – fee $ 1500.00 _____ (37 CFR 1.17(m))

2. Reply and/or fee
   A. The reply and/or fee to the above-noted Office action in the form of AMENDMENT RESTRICTION REQUIREMENT _____ (identify type of reply):

   ☐ has been filed previously on _____.
   ☑ is enclosed herewith.

   B. The issue fee and publication fee (if applicable) of $ _____.
   ☐ has been paid previously on _____.
   ☐ is enclosed herewith.

[Page 1 of 2]

PTO/SB/64 (07-06)
Approved for use through 09/30/2006. OMB 0651-0031
U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
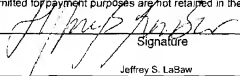
3. Terminal disclaimer with disclaimer fee

☑ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of $ _____ for a small entity or $ _____
for other than a small entity) disclaiming the required period of time is enclosed herewith (see
PTO/SB/63).

4. STATEMENT. The entire delay in filing the required reply from the due date for the required reply until the
filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and
Trademark Office may require additional information if there is a question as to whether either the
abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c),
subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may
contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card
numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by
the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the
USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them
to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication
of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance
of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is
referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-
2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Signature	10/12/06
	Date
Jeffrey S. LaBaw	31.633
Typed or printed name	Registration Number, if applicable
International Business Machines Corporation	512-823-0494
Address	Telephone Number
11400 Burnet Rd., Austin, Texas 78758	
Address	

Enclosures: ☑ Fee Payment

        ☑ Reply

        ☐ Terminal Disclaimer Form

        ☐ Additional sheets containing statements establishing unintentional delay

        ☐ Other:_____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☐ Deposited with the United States Postal Service on the date shown below with sufficient
postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for
Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark
Office as (571) 273-8300.

Date	Signature
	Typed or printed name of person signing certificate

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Franck Barilloud	§	Group Art Unit: 2145
	§	
Serial No. 09/714724	§	Examiner: Jeffrey R. Swearingen
	§	
Filed: 11/16/2000	§	Customer No. 32329
	§	
For: Method and System for Automatic	§	
Load Balancing of Advertised Services	§	
By Service Information Propagation		
Based on User On-Demand Requests		

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

Sir:

In response to the Restriction Requirement dated January 10, 2006, please amend the above-identified application as follows:

1

1. (Canceled) A method of balancing a workload across a plurality of servers, the method comprising the steps of:

 responsive to a request from a requesting client for a distributed service, forwarding the request to a first distributed service manager associated with the requesting client;

 determining whether the first distributed service manager has information about the distributed service;

 if the first distributed service manager has information about the distributed service, retrieving the information about the distributed service;

 if the first distributed service manager does not have information about the distributed service, retrieving information about the distributed service from a second distributed service manager and caching the retrieved information at the first distributed service manager; and

 sending the retrieved information to the requesting client.

2. (Canceled) The method of claim 1 wherein the first distributed service manager has information about at least two sources for the distributed service and selects a source which will provide best service to the requesting client based on network performance metrics.

3. (Original) A method of balancing demand for networked services in a distributed data processing system, the method comprising the steps of:

 initializing one or more local service managers within the distributed data processing system, wherein each local service manager provides access to networked services for clients within the distributed data processing system, and wherein each client is uniquely associated with a local service manager;

 initializing one or more distributed service managers within the distributed data processing system, wherein each distributed service manager provides access to networked services to local service managers within the distributed data processing system, and wherein each local service manager is uniquely associated with a distributed service manager;

 receiving, at a distributed service manager, a request for a networked service from a local service manager;

 determining whether the distributed service manager has information about a networked service with one or more characteristics that match one or more parameters in the request for a networked service; and

 returning information about a matched networked service from the distributed service manager to the local service manager.

4. (Original) The method of claim 3 further comprising:

 sending a request for a networked service from a requesting client to a local service manager associated with the requesting client; and

returning information about a matching networked service from the local service manager to the requesting client, wherein the matching networked service has characteristics that match parameters in the request for a networked service.

5. (Original) The method of claim 3 further comprising:

receiving a request for a networked service at a local service manager; and

determining whether the local service manager has information about a networked service with characteristics that match parameters in the request for a networked service.

6. (Original) The method of claim 5 further comprising:

if the local service manager has information about a matching networked service, returning the information about the matching networked service to the requesting client;

if the local service manager does not have information about a matching networked service, forwarding the request for a networked service from the local service manager to a distributed service manager associated with the local service manager.

7. (Original) The method of claim 3 further comprising:

if the distributed service manager has information about a matching networked service, returning the information about the matching networked service to the local service manager;

if the distributed service manager does not have information about a matching networked service, broadcasting the request for a networked service from the distributed service manager to all distributed service managers in the distributed data processing system;

receiving information about one or more matching networked services at the distributed service manager in response to the broadcast request; and

caching the received information about one or more matching networked services at the distributed service manager.

8. (Original) The method of claim 3 further comprising:

in response to a determination that the distributed service manager has information about two or more matching networked services, selecting a single networked service at the distributed service manager.

9. (Original) The method of claim 8 further comprising:

performing a load balancing operation at the distributed service manager to select the single networked service.

10. (Original) The method of claim 9 further comprising:

comparing network-related metrics during the load balancing operation.

3

11. (Original) The method of claim 10 further comprising:

comparing one or more of network-related metrics associated with a network path between a requesting client and a providing server.

12. (Original) The method of claim 11 wherein the network-related metrics are selected from a group comprising: bottleneck-link speed, round-trip time, and hop count.

13. (Canceled)   An apparatus for balancing a workload across a plurality of servers, the apparatus comprising:

forwarding means for forwarding, responsive to a request from a requesting client for a distributed service, the request to a first distributed service manager associated with the requesting client;

determining means for determining whether the first distributed service manager has information about the distributed service;

first retrieving means for retrieving, if the first distributed service manager has information about the distributed service, the information about the distributed service;

second retrieving means for retrieving, if the first distributed service manager does not have information about the distributed service, information about the distributed service from a second distributed service manager;

caching means for caching retrieved information at the first distributed service manager; and

sending means for sending the retrieved information to the requesting client.

14. (Canceled) The apparatus of claim 13 further comprising:

selecting means for selecting a source which will provide best service to the requesting client based on network performance metrics when the first distributed service manager has information about at least two sources for the distributed service.

15. (Original) An apparatus for balancing demand for networked services in a distributed data processing system, the apparatus comprising:

first initializing means for initializing one or more local service managers within the distributed data processing system, wherein each local service manager provides access to networked services for clients within the distributed data processing system, and wherein each client is uniquely associated with a local service manager;

second initializing means for initializing one or more distributed service managers within the distributed data processing system, wherein each distributed service manager provides access to networked services to local service managers within the distributed data processing system, and wherein each local service manager is uniquely associated with a distributed service manager;

first receiving means for receiving, at a distributed service manager, a request for a networked service from a local service manager;

4

first determining means for determining whether the distributed service manager has information about a networked service with one or more characteristics that match one or more parameters in the request for a networked service; and

first returning means for returning information about a matched networked service from the distributed service manager to the local service manager.

16. (Original) The apparatus of claim 15 further comprising:

sending means for sending a request for a networked service from a requesting client to a local service manager associated with the requesting client; and

second returning means for returning information about a matching networked service from the local service manager to the requesting client, wherein the matching networked service has characteristics that match parameters in the request for a networked service.

17. (Original) The apparatus of claim 15 further comprising:

first receiving means for receiving a request for a networked service at a local service manager; and

second determining means for determining whether the local service manager has information about a networked service with characteristics that match parameters in the request for a networked service.

18. (Original) The apparatus of claim 17 further comprising:

third returning means for returning, if the local service manager has information about a matching networked service, the information about the matching networked service to the requesting client.

forwarding means for forwarding, if the local service manager does not have information about a matching networked service, the request for a networked service from the local service manager to a distributed service manager associated with the local service manager.

19. (Original) The apparatus of claim 15 further comprising:

fourth returning means for returning, if the distributed service manager has information about a matching networked service, the information about the matching networked service to the local service manager;

broadcasting means for broadcasting, if the distributed service manager does not have information about a matching networked service, the request for a networked service from the distributed service manager to all distributed service managers in the distributed data processing system;

second receiving means for receiving information about one or more matching networked services at the distributed service manager in response to the broadcast request; and

caching means for caching the received information about one or more matching networked services at the distributed service manager.

20. (Original) The apparatus of claim 15 further comprising:

5

selecting means for selecting, in response to a determination that the distributed service manager has information about two or more matching networked services, a single networked service at the distributed service manager.

21. (Original) The apparatus of claim 20 further comprising:

performing means for performing a load balancing operation at the distributed service manager to select the single networked service.

22. (Original) The apparatus of claim 21 further comprising:

first comparing means for comparing network-related metrics during the load balancing operation.

23. (Original) The apparatus of claim 22 further comprising:

second comparing means for comparing one or more of network-related metrics associated with a network path between a requesting client and a providing server.

24. (Original) The apparatus of claim 23 wherein the network-related metrics are selected from a group comprising: bottleneck-link speed, round-trip time, and hop count

25. (Canceled) A computer program product on a computer readable medium for use in a data processing system for balancing a workload across a plurality of servers, the computer program product comprising:

forwarding means for forwarding, responsive to a request from a requesting client for a distributed service, the request to a first distributed service manager associated with the requesting client;

determining means for determining whether the first distributed service manager has information about the distributed service;

first retrieving means for retrieving, if the first distributed service manager has information about the distributed service, the information about the distributed service;

second retrieving means for retrieving, if the first distributed service manager does not have information about the distributed service, information about the distributed service from a second distributed service manager;

caching means for caching retrieved information at the first distributed service manager; and

sending means for sending the retrieved information to the requesting client.

26. (Canceled) The computer program product of claim 25 further comprising:

selecting means for selecting a source which will provide best service to the requesting client based on network performance metrics when the first distributed service manager has information about at least two sources for the distributed service.

6

27. (Original) A computer program product on a computer readable medium for use in a data processing system for balancing demand for networked services in a distributed data processing system, the computer program product comprising:

instructions for initializing one or more local service managers within the distributed data processing system, wherein each local service manager provides access to networked services for clients within the distributed data processing system, and wherein each client is uniquely associated with a local service manager;

instructions for initializing one or more distributed service managers within the distributed data processing system, wherein each distributed service manager provides access to networked services to local service managers within the distributed data processing system, and wherein each local service manager is uniquely associated with a distributed service manager;

instructions for receiving, at a distributed service manager, a request for a networked service from a local service manager;

instructions for determining whether the distributed service manager has information about a networked service with one or more characteristics that match one or more parameters in the request for a networked service; and

instructions for returning information about a matched networked service from the distributed service manager to the local service manager.

28. (Original) The computer program product of claim 27 further comprising:

instructions for sending a request for a networked service from a requesting client to a local service manager associated with the requesting client; and

instructions for returning information about a matching networked service from the local service manager to the requesting client, wherein the matching networked service has characteristics that match parameters in the request for a networked service.

29. (Original) The computer program product of claim 27 further comprising:

instructions for receiving a request for a networked service at a local service manager; and

instructions for determining whether the local service manager has information about a networked service with characteristics that match parameters in the request for a networked service.

30. (Original) The computer program product of claim 29 further comprising:

instructions for returning, if the local service manager has information about a matching networked service, the information about the matching networked service to the requesting client;

instructions for forwarding, if the local service manager does not have information about a matching networked service, the request for a networked service from the local service manager to a distributed service manager associated with the local service manager.

7

31. (Original) The computer program product of claim 27 further comprising:

instructions for returning, if the distributed service manager has information about a matching networked service, the information about the matching networked service to the local service manager;

instructions for broadcasting, if the distributed service manager does not have information about a matching networked service, the request for a networked service from the distributed service manager to all distributed service managers in the distributed data processing system;

instructions for receiving information about one or more matching networked services at the distributed service manager in response to the broadcast request; and

instructions for caching the received information about one or more matching networked services at the distributed service manager.

32. (Original) The computer program product of claim 27 further comprising:

instructions for selecting, in response to a determination that the distributed service manager has information about two or more matching networked services, a single networked service at the distributed service manager.

33. (Original) The computer program product of claim 32 further comprising:

instructions for performing a load balancing operation at the distributed service manager to select the single networked service.

34. (Original) The computer program product of claim 33 further comprising:

instructions for comparing network-related metrics during the load balancing operation.

35. (Original) The computer program product of claim 34 further comprising:

instructions for comparing one or more of network-related metrics associated with a network path between a requesting client and a providing server.

36. (Original) The computer program product of claim 35 wherein the network-related metrics are selected from a group comprising: bottleneck-link speed, round-trip time, and hop count.

Withdraw claims 1-2, 13-14, and 25-26.

<u>REMARKS</u>

Claims 1-36 are pending in the present application. Claims 1-2, 13-14 and 25-26 are withdrawn. Reconsideration of the claims is respectfully requested.

I.   <u>35 U.S.C. § 121</u>

The Office Action requires a restriction to one of the following sets of claims:

I. Claims 1-2, 13-14, and 25-26 drawn to distributed service information retrieval, classified in class 709, subclass 223.

II. Claims 3-12, 15-24 and 27-36, drawn to matching a service to characteristics in a network service parameter request, classified in class 709, subclass 226.
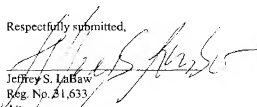
In response to the Restriction Requirement, applicants elect invention II, claims 3-12, 15-24 and 27-36, without traverse.

Early and favorable action is respectfully requested.

II. <u>Conclusion</u>

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,

Jeffrey S. LaBaw
Reg. No. 31,633
Attorney
IBM-Intellectual Property Law
Austin, Texas 78758

9